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DD/M&S

74-0023

8 JAN

MEMORANDUM FOR: Director of Central Intelligence

VIA : Deputy Director for Management and Services

FROM : Director of Logistics

SUBJECT : P.L. 92-313

25X1A 1. Action Requested: It is requested that guidance be provided as to the course of action which the Director of Central Intelligence wishes to pursue with respect to the application of P.L. 92-313 to the Agency Headquarters complex and [REDACTED]

2. Basic Data or Background:

25X1A a. In response to the Director's letter of 6 November to the Honorable Arthur F. Sampson, Administrator, General Services Administration (GSA), requesting exemption for the Headquarters Building complex and Building [REDACTED] from Standard Level User Charges (SLUC) to be assessed under P.L. 92-313, the Administrator advanced the position that no such exemption could be granted. Mr. Sampson's position was based on Mr. Dulles', then Director of CIA, request to GSA to assume "responsibility for" the CIA Headquarters Building, the further fact that the Headquarters Building is not a special-purpose building, and, finally, that [REDACTED] was assigned to CIA under GSA space-assignment authority.

25X1A b. If the decision of the Administrator is allowed to stand unchallenged, the applicability of P.L. 92-313 to the Headquarters complex and [REDACTED] would, in our opinion, impact adversely on the Agency in at least three significant areas: The political, the economic, and the practical. This impact, together with a

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complete background on our and others' experience with GSA/SLUC-related matters to date is set forth in some detail in the attached briefing sheet (Attachment 1).

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3. Staff Position: We are of the opinion that the Administrator's decision, which has misinterpreted or ignored significant and relative legal arguments and has failed to consider our justification to support the "special purpose" character of [REDACTED], must be challenged. How best that challenge can be effected must depend on the extent to and the manner in which the Director wishes the Agency to undertake further action. The alternatives, singly or in combination, are:

a. In a letter to the Administrator, rebut the points raised by him in his letter of 29 November 1973 and request reconsideration of his earlier position. A suggested letter for the Director's signature is attached (Attachment 2).

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b. The matter of the Agency's position and the Administrator's initial review of that position be brought to the attention of the Armed Services Committees requesting their advice or assistance in further action to effect the desired exemption from the applicability of P.L. 92-313. It might be noted here that Messrs. [REDACTED] Office of Legislative Counsel, have discussed this matter informally with some staff members of our committees; and, though reactions were varied, the indication is fairly clear that the staff members consulted believe the matter should be pursued with the Office of Management and Budget (OMB) and/or GSA. A copy of [REDACTED] memorandum for the record on this subject is attached (Attachment 3). [Note: We do not agree that our request for exemption from P.L. 92-313 can be made on the "security" basis suggested by Mr. Woolsey.]

c. The Director, in his forthcoming meetings with Mr. Ash, Director of OMB, raise the matter informally to elicit an indication as to whether or not OMB might be prepared to take some action on our behalf or to

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support us in any further appeals that may be made.

d. Appeal to the Comptroller General or the Attorney General for a specific ruling on the applicability of P.L. 92-313 to the Headquarters complex and [REDACTED]. It is our understanding that an appeal to the Attorney General would have to be made through the Counsel for the White House, since only Cabinet-level agencies may appeal directly to the Attorney General.

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4. Recommendation: It is recommended that the Director determine and advise as to which of the above alternatives or combination thereof should be pursued and action he desires be taken by this or other offices.

/s/ Francis J. Van Damm

Francis J. Van Damm
Director of Logistics

3 Atts

APPROVED: *See note on routing sheet.*

Date

DISAPPROVED: _____

Date

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BRIEFING SHEET FOR DCI

PUBLIC LAW 92-313

I. BACKGROUND

A. Scope:

Public Law 92-313 is an amendment to the Property Act of 1949. It provides GSA with the authority to bill Federal agencies furnished space and/or services. Specific facilities of agencies may be exempt by virtue of their location on military reservations or their qualifications as "special purpose." The law permits GSA to bill for a standard level of services (Standard Level User Charge, SLUC), reimbursable services, plus an amount for a Federal Buildings Fund (FBF). This FBF can be looked on as a rental or depreciation charge to provide for acquisition of new Federal buildings. It is estimated that GSA is charging up to \$5 per square foot for this fund. The basic SLUC charge is to cover standard levels of maintenance to be determined by GSA. To CIA this means essentially the same level of maintenance now being received not including CIA-reimbursed additional services and facilities projects. Reimbursable charges by GSA will be for all those services required beyond GSA's standard level of maintenance, i.e., additional cleaning, operation beyond a 5-day, one-shift week, and special services to support computer, communications, or laboratory facilities. Another impact of the bill is that all major alterations, new construction, or purchase of buildings will be funded through the FBF and subject to review by the Public Works Committees of the House and Senate.

B. Original CIA Appeal:

25X1A In your letter of 6 November 1973, the following positions were taken in a request to exempt the Headquarters complex and [REDACTED] the NPIC facility:

1. The Headquarters Building was built with funds received by a direct appropriation made to the Agency.
2. Payment of the user or "rental" charge is duplicative of the original expenditure.

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3. [REDACTED] is a special-purpose building.

4. The Property Act of 1949 provided "...nothing herein which impaired or affected any authority of the Central Intelligence Agency."

5. The Property Act was enacted before the Headquarters Building was constructed.

C. GSA Response:

In his letter of 29 November 1973, the Administrator, GSA, refused exemption using the following rationale:

1. Agency and GSA staffs were in agreement that the buildings were subject to the Act.

2. Mr. Dulles' letter of September 1959 requested GSA to assume all responsibility for the operation, maintenance and repair, and improvement of the Headquarters complex and to budget therefor.

3. Mr. Dulles' letter and the GSA position were concurred in by the Bureau of the Budget (BOB).

4. Headquarters is not a special-purpose building and is the type over which GSA traditionally exercises control.

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5. [REDACTED] was provided to CIA by GSA, and custody was never transferred.

D. CIA Analysis - GSA Position:

1. CIA personnel have never conceded applicability under Public Law 92-313. In fact, on two occasions, Mr. Friedlander, Executive Director, Public Buildings Service, GSA, was advised orally that CIA considered at least the Headquarters complex to be exempted and probably other owned space.

2. Mr. Dulles' letter requested only those items cited above from GSA: specifically excluded telephone service; never mentioned custody or control; and, to our knowledge, was never specifically directed to the attention of BOB. Further, Office of Management and Budget (OMB), formerly BOB, has continued to approve our request for funds for special alterations and additional construction, plus special maintenance services for both Headquarters and NPIC.

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3. [REDACTED] is clearly a special-purpose property and, despite the fact that it was acquired through GSA, was effectively reconstructed by the expenditure of \$12 million funded from the Reserve with BOB's approval. CIA has never been confronted with the question regarding GSA's custody and control of the facility.

E. Other Possible Legal/Administrative Positions:

1. It can be argued that OMB has recognized the non-applicability of GSA control by continuous funding of special Agency facilities projects for Headquarters and NPIC.

2. Though our Headquarters complex argument is based on the source of construction funds, it could also be argued that, like NPIC, Headquarters, with its secure and vaulted areas, computer and watch centers, has many features that are "special" for the purpose of the collection, processing, and dissemination of intelligence.

3. The Director's mandate to protect intelligence sources and methods supersedes any claim that GSA can make for having custody and control under the Property Act.

4. Contribution to the FBF with subsequent jurisdiction by the Public Works Committees subverts the intent of the Congressional "watchdog" committees.

5. Partial exemption of a single agency's facilities is already established in practice with NASA, NBS, and NIH.

F. Projected and Possible Further Actions:

1. A second letter is being sent to Mr. Sampson taking exception to his position per D above. AEC has already followed this course (see below) and has received a second rejection of exemption.

2. In the event F.1. fails, the Agency could:

a. Appeal directly to the Director, OMB, for an exemption as provided in the parent Act.

b. Appeal to the Comptroller General. The Comptroller General has been documented several times as interpreting applicability of Public Law 92-313.

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c. Appeal to the Attorney General if such could be accomplished through the Counsel for the White House, since direct appeal is limited to Cabinet-level agencies or departments.

3. At the time the followup appeal is sent to Mr. Sampson, informally approach the Agency Congressional committees to apprise them of action taken to date, indicate proposed actions if the appeal to Sampson fails, and elicit their position regarding support or reaction to the above alternative proposed actions. (It is understood, through staff members of some of the committees, that there is great Congressional concern and recent awareness of the full scope and impact of Public Law 92-313.)

G. Other Agencies:

AEC, NASA, NBS, and NIH were contacted to ascertain their positions on applicability of Public Law 92-313.

1. AEC used GSA on an annual, reimbursable basis for maintenance at its Germantown headquarters. GSA has claimed applicability of Public Law 92-313. AEC has twice appealed this decision in writing and GSA has rejected both appeals. AEC's General Counsel claims that AEC's position is legal and further appeals are contemplated (possibly to OMB).

2. NASA's Goddard headquarters complex has been exempted because GSA was never used for maintenance services. One federally owned building in Washington and a few leased spaces are conceded to be under the Act. NASA is planning on new construction at Goddard and abandonment of the charged facilities, with severance of relationships with GSA.

3. NBS, whose headquarters complex is self-maintained, will be paying Standard Level User Charges on only a few limited properties leased through GSA.

4. NIH headquarters is self-maintained and GSA has not pressed applicability. Public Law 92-313 is being applied to a few leased spaces. GSA has also claimed applicability to the Social Security Building in Baltimore. This building was constructed under special trust fund monies and maintenance was provided by GSA at direct annual reimbursement of \$12 million per year. GSA has now billed \$40 million under Public Law 92-313. This is being appealed.

II. IMPACT

A. Political:

If Public Law 92-313 is held to be applicable to the Agency's Government-owned properties and the GSA Administrator's letter is allowed to stand, both the Headquarters complex and NPIC will be construed to also fall within the provisions of the parent Property Acts. Impact can be as follows:

Political jurisdiction will be assumed by the Public Works Committees for Agency expenditures for alterations or new construction. This will be a significant transfer of power from the Armed Services Committee. Further, the OMB examiner has indicated that CIA must look to GSA for funds to support alterations and large special projects such as emergency generators or other backup utilities systems.

B. Economic:

25X1A The total FY 1975 budgetary costs of Public Law 92-313 are some \$25 million. Of this \$25 million, some \$4.3 million represents "rental or depreciation" charges for the Headquarters complex and [REDACTED]. A definite consideration is that, in future years when Public Law 92-313 costs are an integral part of the Agency budget, OMB percentage cuts across the board may well necessitate extra cuts in ongoing operations in order to meet GSA's billings.

C. Practical:

1. Concession to the applicability of the Public Buildings Acts might well be construed - rightly or wrongly - by GSA to give them the authority to assign space within Agency buildings, determine the level of maintenance and hours of operation, approve alterations or expansion of utilities service, and generally control space utilization and facilities operations.

2. Unless some specific exemptions were accorded the Agency, approval for new construction, alterations, or major projects must be approved by GSA and, if over \$500,000, would require a prospectus and approval by the Public Works Committees. Not only are excessive delays introduced by this procedure, but it can be expected that the Agency will be forced to stand in line with other agencies for eventual allocation of funds.

25X1A 3. The Agency is now proceeding with modification of the NPIC building to provide, along with other things, training space and computer expansion in support of the [REDACTED] GSA had originally required a prospectus; however, they were dissuaded by a claim for exemption under previous practice. If Public Law 92-313 applies, the Agency may expect to have a prospectus required and a substantial delay introduced, which may jeopardize immediate full utilization of the [REDACTED] Acquisition of real estate to meet current and projected space needs may be expected to be substantially delayed, involve additional costs, and force the exposure of Agency population and Headquarters operations before the Public Works Committees.

III. POSSIBLE ACTIONS

A. Inasmuch as AEC's second appeal was rejected (with full exposure of their arguments to GSA), the Agency could appeal directly to the Director, OMB, after informal discussions with appropriate Agency committees.

B. In the event that the Director, OMB, either refuses consideration or makes a negative determination, an appeal could be made to the Comptroller General and the Attorney General as a possible extreme. If appeals are made to OMB and/or the Comptroller/Attorney Generals, parallel representation to the Agency's committees could be made to solicit their support.

C. In the event that all appeals are rejected, an agreement might be negotiated with GSA under the aegis of the National Security Act to establish levels of facilities control, freedom of hours of operation and levels of maintenance and service, and procedures for protecting the numbers and identities of personnel and operations. Additionally, the Agency could physically establish an "enclave" of critical and/or sensitive functions to be maintained and operated by the Agency separate from the general functions of the Headquarters Building (although contained within it).

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The Honorable Arthur F. Sampson
Administrator
General Services Administration
Washington, D.C. 20405

Dear Mr. Sampson:

STATINTL

This is further in regard to the applicability of the space user charge feature of section 210(j) of the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C.A. 490(j) to two facilities utilized by this Agency. You will recall that in my letter of 6 November 1973, I stated that this did not apply to this Agency's Headquarters Building complex because it was not Administrator-furnished space or to [REDACTED] because that was a special purpose building. Apparently, it is your position that these facilities are subject to the space user charge because you have custody of them. I disagree with this position.

In support of your claim to have custody of the Headquarters Building, you cite section 210(d) of the Property Act and refer to a request by Mr. Dulles that the General Services Administration (GSA) assume responsibility for its operation, maintenance, repair, and improvement. In my opinion a consideration of that section together with the correspondence exchanged at the time will demonstrate that the custody aspects of section 210(d) are in no way involved.

Section 210(d) gives to the Director of the Office of Management and Budget (OMB), whenever he deems such action to be in the interest of economy of efficiency, the authority to transfer to GSA all functions vested in a Federal agency with respect to the operation, maintenance, and custody of Government office buildings with certain specified exceptions. This section was enacted to remedy a condition found to exist in Reorganization Plan No. 18 of 1950. While section 2 of the plan had transferred these functions to GSA, the plan was not considered to authorize the transfer of functions subsequent to the plan's effective date of July 1, 1950. Section 210(d) was intended to remedy that condition by providing the Director of OMB with continuing authority to transfer functions, including custody.

It is to be noted that in terms of section 210(d) for custody of a building to be transferred, action by the Director of OMB is required. However, we have no records indicating that the Director of OMB ever took any action to transfer custody of the Headquarters Building to GSA. To accept your suggestion that section 210(d) was activated to transfer custody as a consequence of the Bureau of the Budget having concurred in my predecessor's request of GSA would require me to acknowledge a transfer by implication. This I cannot do.

By an exchange of correspondence between Mr. Floete and Mr. Dulles dated 29 September 1959 and 28 October 1959, respectively, it was understood that GSA would perform services incident to the operation, maintenance, protection, and repair of the Headquarters Building. It is to be noted that the parties made no mention of custody. This, of course, was consistent with section 210(b) which authorizes the Administrator to operate, maintain, and protect any Government building upon request of any occupying Federal agency. As contrasted with section 210(d), that section makes no mention of custody. This consistency of treatment is persuasive of the fact that any reliance on transfer of custody under section 210(d) is misplaced. Given this background, together with the fact that neither my predecessors nor myself has ever acknowledged that GSA had custody of the Headquarters Building, makes it apparent to me that there is no legal basis for the claim that GSA has custody of the facility.

In my letter I did not suggest that the Headquarters Building complex was exempt from the space user charge because it was a special purpose building but that the facility was exempt because it is not Administrator-furnished space.

A reading of section 210(j) of the Property Act shows that the charges authorized are composed of two elements, one of which is related to Administrator-furnished space and the other to Administrator-furnished services. The legislative history of this section, as evidenced by your predecessor's testimony before the House Subcommittee on Public Buildings and Grounds, shows that its purpose was to require agencies to pay for space they occupied rather than obtain it free of charge by way of GSA expending its own appropriation in their behalf. But as I have stated this Agency's Headquarters Building complex was not obtained in the manner which your predecessor faulted as being illogical and inconsistent with the performance budgeting concept. It is because this facility was acquired by the Agency having expended its own appropriation that it cannot be considered to be Administrator-furnished for purposes of the space user assessment.

STATINTL

Your position that [REDACTED] is not a special purpose building and thus exempt from the space user charge is not understood. While I concede that as a warehouse facility it was made available to this Agency, this does not alter the fact that by an expenditure of some \$12.2 million of Agency funds it was transformed into a special purpose building dedicated to fulfilling a National Security Council directive. Having been especially configured and equipped to meet the Intelligence Community's highly classified requirements for photograph development, analysis, and dissemination, it cannot now be considered to be that type of facility over which GSA has traditionally exercised space assignment authority.

STATINTL

While this Agency is prepared to reimburse GSA for the performance of services incident to the operation, maintenance, and protection of the Headquarters Building complex and [REDACTED], it is my firm opinion that these facilities are not

otherwise subject to assessment by GSA. Accordingly, for the reasons set out here and in my letter of 6 November 1973, a reconsideration of your position is requested.

Sincerely,

W. E. Colby
Director

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STATINTL

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CONCURRENCE:

HAROLD L. BROWNMEN
Deputy Director
for
Management and Services

Date

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OLC 73-1453

6 December 1973

MEMORANDUM FOR THE RECORD

SUBJECT: Conversation with James Woolsey, General Counsel,
Senate Armed Services Committee

1. I called Jim Woolsey today to take up several matters with him prior to his departure from the Committee staff next week. I mentioned our current considerations regarding the possibility of inserting into the Stennis and/or Nedzi legislative amendments on the National Security Act language which would provide criminal penalties for disclosures of information concerning intelligence sources and methods by persons having an official relationship with respect to such information. I told him we were particularly interested in his judgment as to whether the Armed Services Committees could successfully retain jurisdiction over such legislation or if it was susceptible to an argument on the part of the Judiciary Committee that such legislation was more properly within their purview.

2. Mr. Woolsey said his first reaction was that no legislation on this subject will be successful until such time as the Congress squarely faces the issue of what is and what is not classified information. He said it was his "political judgment" that until this is accomplished legislation which we contemplate has no chance of passage. He said further he thought that Congress should establish a set of criteria for the types of information to be covered in the classified category for the benefit of the courts in their handling of cases of alleged violations. In this connection, Mr. Woolsey thought intelligence sources and methods, just as COMINT information, should be included in those categories. In sum, he feels that the question of committee jurisdiction and the objection of a significant number of liberal minded Senators to such legislation would preclude any effort to have it included in the amendments of the National Security Act.

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3. I also talked with Mr. Woolsey about our current discussions with respect to recent amendments to the Federal Property and Public Building Acts which would establish standard level user charges to be paid to the GSA and also would (unless the Agency can obtain an exemption) place future building construction, alterations, etc., under the jurisdiction of GSA and the Public Works Committees. Mr. Woolsey said he thought the strongest argument we could use against our inclusion in this program was the argument of security--that is that the Agency could not submit to the normal legislative requirements and procedures because of the peculiar security limitations which we must impose. He also said there was no question but what Agency funds were carefully guarded by our Subcommittees. (He added, however, we should not assert this argument too strongly without prior discussion with our Subcommittee chairmen.)

4. Mr. Woolsey feels we should pursue the issue with the OMB and GSA. If we are unsuccessful and if we feel it necessary to push it further he suggests we prepare a memorandum for Chairman Stennis on the points involved, with the thought that Mr. Stennis might take the question up with Senator Jennings Randolph, Chairman of the Senate Public Works Committee. He also suggested that we try to involve Jim Hyde, OMB, in these discussions and encourage Mr. Hyde to communicate with Mr. Ed Braswell, of the Committee staff, who is a good friend of Mr. Hyde's.

5. I asked Mr. Woolsey about his future plans and he said he will be leaving the Committee staff next week to join the firm of Shea and Gardner a Washington law firm that is concerned mainly with practice before the Federal courts in a diversity of fields including anti-trust, corporations, and other areas. He said the firm also represents the National Education Association. Mr. Woolsey's replacement will be Clark McFadden, a young (age 27 or 28) member of the Defense Department's Comptroller Staff who has a joint degree from Harvard Law School and Business Administration School and whom Mr. Woolsey described as a very intelligent and upstanding young man. Mr. Woolsey said if he could be of any assistance to the Agency in his new position, for us not to hesitate to call on him. I told him we had hoped he would make such an offer and certainly would not be reluctant to contact him.

25X1A

Deputy Legislative Counsel

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STATINTL